

Entered on Docket
December 15, 2022
EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



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2 The following constitutes the order of the Court.
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4 Signed: December 15, 2022

5 *M. Elaine Hammond*
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10 M. Elaine Hammond
11 U.S. Bankruptcy Judge
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16 UNITED STATES BANKRUPTCY COURT
17 NORTHERN DISTRICT OF CALIFORNIA
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In re
10 VINH NGUYEN,
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12 Debtor.
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15) Case No. 22-50907 MEH
16) Chapter 13
17)
18) Order After Video Hearing
19) Date: December 8, 2022
20) Time: 1:30 p.m.
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ORDER STRIKING SUPPLEMENTAL DOCUMENT

Before the court is Paul Nguyen's ("Creditor") *Supplemental Document re: Motion to Dismiss Chapter 13* ("Document") (Dkt. # 117). Creditor filed the Document to support his Motion to Dismiss Debtor's chapter 13 case ("Motion") (Dkt. # 72). Creditor filed the Motion on November 4, 2022, and Debtor filed an opposition on November 20, 2022 (Dkt. # 84). On November 22, 2022, Creditor filed his reply to Debtor's opposition (Dkt. # 92). A hearing was held on Creditor's Motion on December 8, 2022. Appearances were as stated on the record.

Two days before the hearing, Creditor filed the Document. At previous hearings, the court warned both parties that supplemental documents, filed outside the necessary pleadings, would be stricken. For the reasons herein, the Document is stricken.

1 Bankruptcy Local Rule (“BLR”) 9013-1(b) provides, “[i]nitial papers shall include the
2 following three documents: (1) [the] first document, the motion...(2) [t]he second document,
3 the memorandum of points and authorities...(3) [t]he third document, the notice of hearing.”

4 Creditor’s Motion satisfies BLR 9013-1(b) because it includes the requisite three
5 documents. However, the Document is in violation of BLR 9013-1(e) which governs
6 supplementary materials:

7 Prior to the noticed hearing date, counsel may bring to the Court’s attention
8 relevant judicial opinions published after the date the opposition or reply was filed by
9 filing and serving a Statement of Recent Development, containing a citation to and
10 providing a copy of the new opinion without argument. Otherwise, once a reply is
11 filed, no additional memoranda, papers or letters shall be filed without prior Court
12 approval.

13 BLR 9013-1(e). The Document does not provide relevant judicial opinions published
14 after Debtor’s opposition or Creditor’s reply. Instead, Creditor asserts in the Document that
15 Debtor is ineligible for chapter 13 under 11 U.S.C. § 109(e) because Debtor’s total debts
16 exceed the \$2,750,000 debt limit established by the Bankruptcy Threshold Adjustment and
17 Technical Corrections Act, made effective June 21, 2022.

18 Federal Rule of Civil Procedure (“FRCP”) 12(f) permits a court to strike from a
19 pleading “an insufficient defense or any redundant, immaterial, impertinent, or scandalous
20 matter.” FRCP 12(f). The function of a FRCP 12(f) motion is to avoid the expenditure of
21 time and money that arises from litigating spurious issues by dispensing with those issues
22 prior to trial. *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). In
23 reviewing a motion to strike, the court views the pleadings in the light most favorable to the
24 non-moving party and accepts the factual allegations as true. *Certified Nutraceuticals, Inc. v. den Hoed*, 2019 WL 329484, at *1 (S.D. Cal. Jan. 25, 2019).

25 I find the Document appropriate to strike under FRCP 12(f). The Document is
26 redundant to the extent that it provides additional support to Debtor’s Motion. Additionally,
27 the Document is inappropriate because it introduces an entirely new argument that was not
28 raised in Creditor’s original Motion.

Moreover, the supplement is impermissible under BLR 9013-1(e). As stated above, Creditor filed the Motion on November 4, 2022, and filed a reply to Debtor's opposition on November 22, 2022. As the Document does not reference or cite to new case authority concerning Creditor's Motion, the Document is not an allowed additional filing under BLR 9013-1(e). Accordingly, the Document is hereby stricken.

IT IS SO ORDERED.

END OF ORDER

COURT SERVICE LIST

Via ECF:

All ECF Recipients

Via Mail:

Paul Nguyen

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